UNITEDHEALTH GROUP®

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June 13, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision
CG Docket No. 18-152, 02-278 / DA 18-493

Submitted Electronically: FCC Electronic Comment Filing System

Dear Ms. Dortch:

UnitedHealth Group ("UHG") is pleased to respond to the Federal Communications Commission's ("FCC") request for comments,[1] which seeks feedback regarding the interpretation of the Telephone Consumer Protection Act in light of the D.C. Circuit's recent decision in *ACA International v. FCC* (the "ACA International decision").[2]

UHG is dedicated to helping people live healthier lives and making the health care system work better for everyone through two distinct business platforms—UnitedHealthcare, our health benefits business, and Optum, our health services business. Our workforce of 285,000 people serves the health care needs of nearly 140 million people worldwide, funding and arranging health care on behalf of individuals, employers, and the government. As America's most diversified health and well-being company, we not only serve many of the country's most respected employers, we are also the nation's largest Medicare health plan—serving nearly one in five seniors nationwide—and one of the largest Medicaid health plans, supporting underserved communities in 28 States and the District of Columbia.

Definition of Automatic Telephone Dialing System (ATDS)

The FCC's request for comments (the "Notice) seeks input on how to interpret several elements of the definition of an automatic telephone dialing system ("ATDS") in light of the ACA International decision. In particular, the Notice asks if the statutory prohibitions against automatic telephone dialing systems apply in situations where the caller is not using the equipment as an ATDS. We believe that equipment not used as an ATDS should not be subject to any requirements applicable to such systems. By requiring the "use" of an ATDS in the statutory prohibition, Congress evidenced its intent to require that the functionalities of an ATDS

[1] *Consumer and Governmental Affairs Bureau Seeks Comment on the Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision*, CG Docket No. 18-152, 02-278 (May 14, 2018).
[2] *ACA International v. FCC*, 885 F.3d 687, 709 (D.C. Cir. 2018).

actually be used in the placing of a call, namely the use of a random or sequential number generator to store or produce numbers and the equipment then actually placing calls to those random/sequential numbers. This interpretation is also consistent with statements the FCC has made in the past regarding what an autodialer allows someone to do: specifically, placing calls to a large number of people in short amounts of time with no human intervention. Otherwise, we believe that liability under TCPA could result simply by procurement of equipment with a technological capability regardless of whether it is used.

Related to these points, we do not think it is necessary to create a "human intervention" test to determine whether an ATDS exists. However, we do ask the FCC to clarify that an individual manually dialing a phone number, including an individual clicking on a phone number on a computer (sometimes referred to as "click-to-call" technology), is not considered making a call made using an ATDS. Such methods of dialing do not allow for the contacting of thousands of people in a short period of time and also do not require the use of a random or sequential number generator to create or store the numbers to be called.

We believe these interpretations and clarification will allow the FCC to continue to protect consumers from unwanted calls and texts, while still allowing individuals to receive important information.

Reassigned Wireless Numbers

The Notice also seeks comment on how to interpret the term "called party" for calls to reassigned numbers. UHG believes that a called party should be defined as the person the caller expected to reach.

In addition, the FCC is asking whether a reassigned numbers safe harbor is necessary. As noted in our comments to the FCC dated June 7, 2018, we rely on contact information we receive from individuals, employers, and the government when we conduct ongoing business with our members.[3] We do not believe that callers should be subject to liability under the TCPA for informational, non-telemarketing, autodialed, and prerecorded calls to wireless numbers for which valid prior express consent has been obtained but which, unbeknownst to the calling party, have subsequently been reassigned to a new subscriber.

The FCC has long established rules to confirm that good-faith callers are not liable for calls for which they have "reasonable reliance" on the prior express consent of a called party.[4] The FCC should therefore confirm that parties are not subject to TCPA liability for such calls when made to a reassigned number, provided such calls were made in reasonable reliance on the collection of prior express consent of the "called party."

[3] UnitedHealth Group comment letter dated June 7, 2018 in response to *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Rulemaking, CG Docket No. 17-59 (March 23, 2018).

[4] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, CG Docket No. 02-278, at ¶ 1 (2012) (confirming "that sending a one-time text message confirming a consumer's request that no further text messages be sent does not violate the [TCPA] or the Commission's rules as long as the confirmation text has the specific characteristics described in the petition").

Revoking Prior Express Consent

The Notice seeks feedback on how a called party may revoke prior express consent to receive robocalls. We suggest that the FCC not adopt a standardized method for revocation. The Court in the ACA International decision upheld the FCC's guidance that, "a called party may revoke consent at any time and through any reasonable means . . . that clearly expresses a desire not to receive further messages."[5] The Court also confirmed that the called parties and callers may contract to determine the revocation method.

Consistent with that ruling, the FCC should reaffirm its position that acceptance of reasonable revocation in the absence of a contract, or a contractual compliance for revocation of consent are both satisfactory approaches to enabling an individual's revocation.

UHG welcomes the opportunity for constructive discussion and collaboration. Thank you for your thoughtful consideration of our comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

Thad C. Johnson
Chief Legal Officer
UnitedHealthcare

Richard J. Mattera
Chief Legal Officer
Optum

[5] *ACA International,* slip op. at 10 quoting *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* 30 FCC Red. at 7989-90 ¶47 and 8031 ¶63.